Telehealth and Suicide Safer Care

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Once Upon A Time

And Then There Was

Ah . . . Remember when?

The Clinical Relationship?

Webinar Objectives

My goals today are to:

- Reflect on the ways in which technology has altered the nature of behavioral health

- Identify compelling ethical issues related to practitioners' increasing use of technology to serve and communicate with clients, and access and store digital information

- Review relevant ethical, legal, and practice standards related to behavioral health and technology

- Discuss ways to protect clients, especially high-risk clients who warrant a safety plan

- Discuss ways to protect practitioners (i.e., prevent ethics complaints and malpractice claims)

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Core Ethics Knowledge

Ethical dilemmas: Conflicts between practitioners' duties and obligations—difficult choices related to practitioners' use of technology.

Ethical decision-making: Deciding on a course of action when ethical dilemmas occur involving technology use.

Ethics risk management: Protecting clients and ourselves when using technology (lawsuits, licensing board complaints, ethics complaints).

Ethical Challenges When Using Technology in Behavioral Health:
The Changing Nature of Services

- What do we mean by **relationship**?

- Who do we aim to **serve**?

- What do we mean by **privacy**?

- What are the **boundaries** of professional-client relationships?

- What do we mean by **informed consent**?

- How do we manage and access clinically relevant **information**?

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Longstanding Ethical Challenges [examples]

- **Confidentiality and privacy**: Disclosures without client consent to protect third parties—potential victims, law enforcement, parents, HIV; responding to subpoenas; distinguishing HIPAA and 42 CFR Part 2

- **Informed consent**: Competency issues, language issues, age-of-consent issues

- **Boundary issues and dual relationships**: Practitioner self-disclosure, boundaries in small/rural communities; managing client gifts and invitations; hiring former clients

- **Documentation**: Level of detail in notes; client access to records

- **Termination of services and client abandonment**: Unpaid bills; noncompliant client

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Ethical Challenges in the Digital Age [examples]

- **Confidentiality and privacy**: Protection of PHI; HIPAA-compliant software; searching online for information about clients

- **Informed consent**: Consent-to-treat protocols that address use of public Wi-Fi; client's geographic location for remote sessions; technology failure; management of emergencies; limitations of remote service delivery; use of artificial intelligence to assess and assist clients

- **Boundary issues and dual relationships**: clients who search online for information about practitioner; responding to Facebook request; Facebook relationship with former clients; after-hours digital communications

- **Documentation**: clients' remote access to records; challenges of EHR/EMR; integrated health records

- **Termination of services and client abandonment**: clients who need higher level of care; response time and digital communications; managing emergencies; responding to off-hours SMS/text messages; voicemail box full; return-to-office protocols

Terminology in the Digital Age

- Internet-supported Intervention
- web-based therapy
- artificial intelligence
- e-interventions
- computer-mediated interventions
- online therapy
- online counseling
- technology assisted distance counseling (TADC)
- e-therapy/e-counseling
- cybertherapy/cybercounseling
- e-health
- psycho-technology
- Tele-Health
- Internet counseling
- Therap-E-Mail

New Ethical Standards in Social Work: Technology

Regulatory standards: State licensing boards

Practice standards: Professional social work associations

Ethical standards: Professional codes of ethics

Key Ethical Issues in the Digital Age

- Informed consent

- Privacy and confidentiality

- Boundaries, dual relationships and conflicts of interest

- Practitioner competence

- Records and documentation

- Collegial relationships

Informed Consent

- Verification of client identity
- Capacity to consent (e.g., age, competence)
- Potential risks
  - Privacy of email address, third-party access (e.g., abusive partner)
  - Emergency services
  - Interruption of services
  - Language, literacy

Privacy and Confidentiality

- Privacy protection and encryption
- Adherence to relevant laws and regulations
- Conducting Google search
- Confidentiality agreements when conducting group treatment
- Contacts with collaterals
- Exceptions to clients' confidentiality rights (e.g., disclosures to protect clients from self harm, third parties, mandatory reporting, court orders)

Boundaries, Dual Relationships and Conflicts of Interest

- Social networking (Facebook, LinkedIn)
  - Current clients
  - Former clients
  - Former Facebook friend becomes client
- Practitioner self-disclosure
- Practitioner-client access
  - Time of day/night
  - Form of access, e.g., text message, email
- Relationships with former clients
- Conflicts of interest, e.g., commercially sponsored video conferencing software with ads

Practitioner Competence

Practitioners who use technology to serve clients should know:

- how to communicate effectively while using the technology to provide social work services;
- handle emergency situations from a remote location;
- apply the laws of both the practitioner's and client's location (including licensure laws);
- be sensitive to the client's culture, including the client's cultural community and linguistic, social, and economic environment;
- attend to clients' unique needs and challenges;
- ensure that the technology is in working order to provide effective services and avoid disruption;
- keep abreast of the changing landscape of technology;
- and adapt accordingly.

Records and Documentation

- Encryption

- Access

- What and how to document (email, text, cybertherapy communications)

- Retention

- Disposal and destruction

- Relevant laws and regulations

Collegial Relationships

- Treating with respect
- Avoiding derogatory and defamatory postings
- Respecting colleagues' privacy (e.g., Google searches)
- Respecting colleagues' work products (plagiarism, unauthorized uploads)
- Responding to colleagues' unethical conduct (e.g., inappropriate postings, cyberbullying)
- Avoiding cyberbullying, collegial harassment

Distance Behavioral Health: Potential Advantages

- Emotionally safe (e.g., shy, anxious client)
- Semi-anonymity regarding self-disclosure
- Increased chance of candor
- Convenience
- Absence of geographical barrier
  - Rural areas
  - Clients with disabilities
- Immediacy
- Flexible scheduling
- Cost effective

Distance Behavioral Health: Potential Risks and Challenges

- Loss of human factor, nonverbal cues
- Misunderstandings
- Compromised privacy and confidentiality
- Boundary issues (ambiguous access, self-disclosure)
- Difficulty addressing long-term, complex problems
- Delayed response
- Feeling rushed to respond to emails, texts
- Emergencies
- Identity fraud
- Interstate practice without a license
- Technological failure

Distance Behavioral Health: High-risk Clients

- suffering from psychiatric disorders needing immediate attention
- significantly depressed
- a danger to themselves or others
- struggling with serious substance abuse issues
- presenting psychotic or actively suicidal concerns
- struggling with psychological disorders characterized by distortion of reality
- highly reactive and potentially dangerous
- struggling with certain personality disorders such as those with borderline personality disorder, paranoia or dissociative disorders

Key Elements of a Safety Plan

1. **Recognize warning signs:** What sorts of thoughts, images, moods, situations, and behaviors indicate to you that a crisis may be developing? Write these down in your own words.

2. **Use your own coping strategies – without contacting another person:** What are some things that you can do on your own to help you not act on thoughts/urges to harm yourself?

3. **Socialize with others who may offer support as well as distraction from the crisis:** Make a list of people (with phone numbers) and social settings that may help take your mind off things.

4. **Contact family members or friends who may help to resolve a crisis:** Make a list of family members (with phone numbers) who are supportive and who you feel you can talk to when under stress.

5. **Contact mental health professionals or agencies:** List names, numbers and/or locations of clinicians, local emergency rooms, crisis hotlines – carry the Lifeline number 1-800-273-8255

6. **Ensure your environment is safe:** Have you thought of ways in which you might harm yourself? Work with your counselor to develop a plan to limit your access to these means.

Adapted from Stanley-Brown Safety Plan

Developing a *Social Media Policy*

- "Friending" on Facebook
  - o Boundaries issues
  - o Rejection issues
  - o Privacy issues (e.g., acquaintances in common)
- Electronic interactions (Facebook, email, SMS/text messages)
  - – Privacy issues
  - – Documentation issues
  - – Timely responses
- To Google or not to Google
  - o "Curiosity" searches
  - o Crisis searches
- Business review sites (e.g., Yelp, Healthgrades)
- Location-based services

Standard of Care

"What a ***reasonable*** and ***prudent*** professional, with the same or similar training, should have done under the same or similar circumstances."
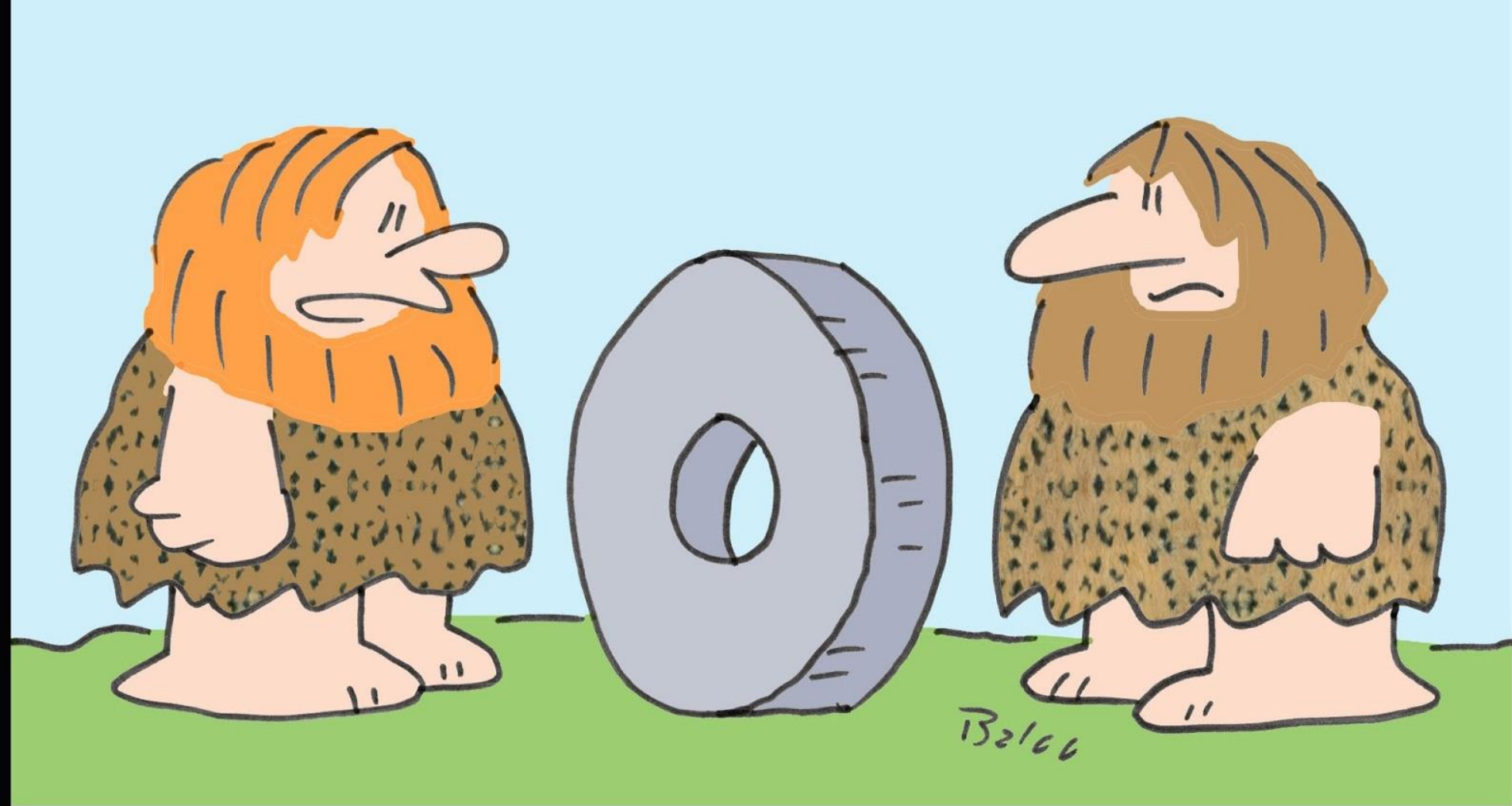
Standard of Care: Ethically Complex Cases

"In ethically complex cases, when reasonable and prudent practitoners do not agree on a course of action, what a reasonable and prudent professional, with the same or similar training, should have done under the same or similar circumstances."

Standards of Care

- **Substantive** standard of care
- **Procedural** standard of care
  - Consult colleagues and supervisors
  - Review relevant ethical standards related to technology use
  - Review relevant laws, policies, and regulations related to technology use
  - Review national technology practice standards
  - Review relevant literature
  - Obtain legal consultation, when necessary
  - Consult ethics committee, if available
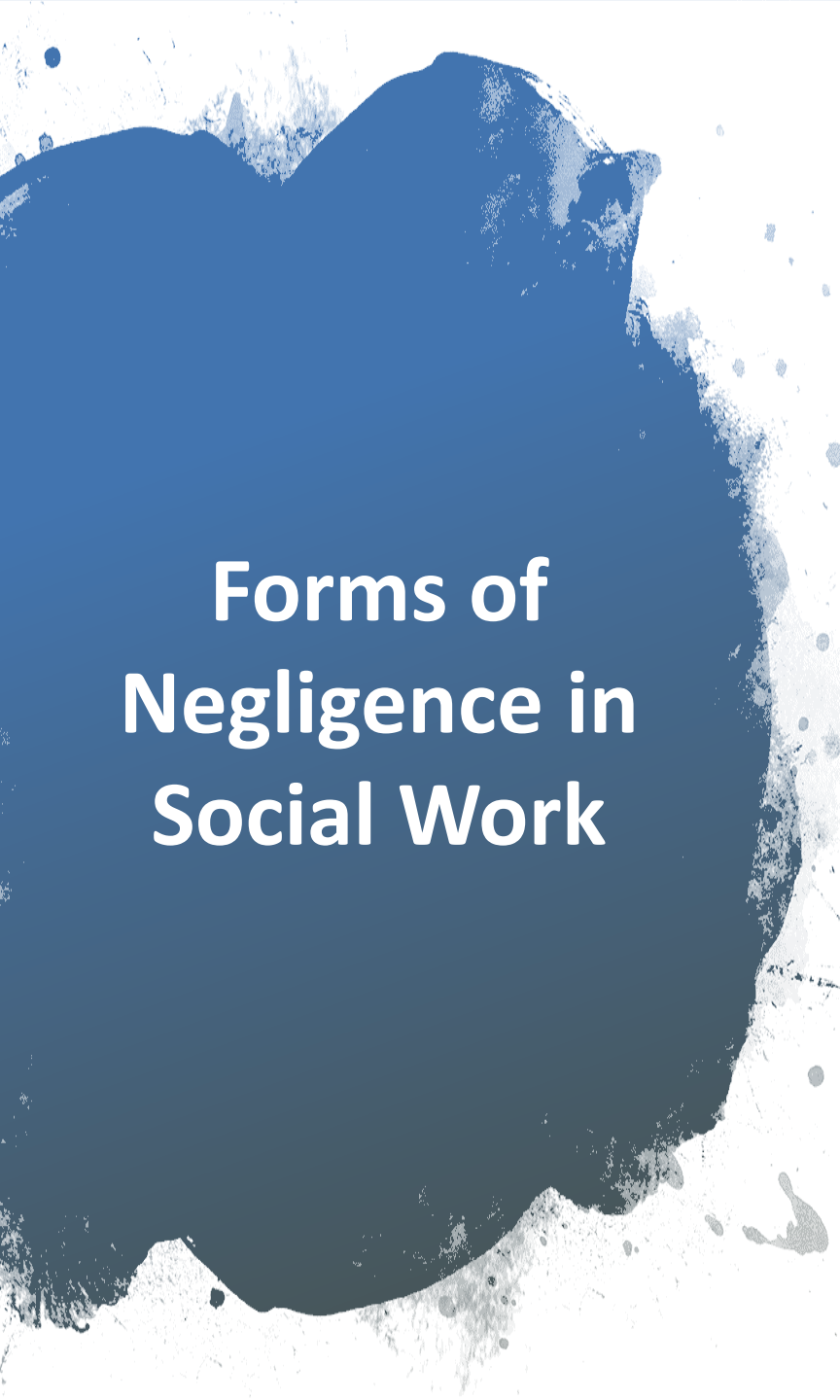 - Document decision-making steps

Liability Risks

Professional Negligence

- A duty exists
- Dereliction or breach of the duty
- Damage or injury
- Causal connection between the breach of the duty and the damage or injury (proximate cause or "cause in fact.")

Forms of Negligence in Social Work

- **Misfeasance**: Commission of a proper act in a wrongful or injurious manner or the improper performance of an act that might have been performed lawfully.

- **Malfeasance**: Commission of a wrongful or unlawful act.

- **Nonfeasance**: The failure to perform an act that is part of one's responsibility.

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The Importance of Malpractice Insurance

- Why every practitioner should have their own malpractice coverage: Agency employees v. independent (private) practitioners
  - Potential conflicts of interest
  - Judgments that exceed the cap on employer's policy
  - Licensing board complaint legal defense costs
- Maximize coverage
  - Lawsuit
  - Licensing board complaint
- Consider cyber-liability coverage

Consent to Treat for Distance Behavioral Health

The consent-to-treat process should address these key points:

- Potential benefits and risks of distance services;
- Steps the practitioner and client can take to protect privacy during sessions;
- Possible confidentiality risks and the importance of encryption, use of secure networks, passwords;
- How the practitioner and client will handle clinical emergencies and possible need for higher level of care (including a safety plan, when warranted);

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Consent to Treat for Distance Behavioral Health (cont'd.)

- Text and email communications should be limited to administrative matters, such as changing appointments, billing matters, and other related issues;

- Client agrees to confirm geographic location if outside the state where clinician is licensed;

- How to handle technology failure or disruption during a clinical session

- The risks associated with clients' use of public Wi-Fi;

- Client agrees to not record sessions;

- Client agrees to not permit third parties to be in the room where the client is located.

Negligent Electronic Services Intervention

High-risk techniques

Inadequate training or expertise

The importance of practitioner competence

Termination of Electronic Services and Interventions

The concept of abandonment

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Guidelines to protect clients and minimize risk

Termination Guidelines to Protect clients   and Minimize Risk

Provide clients with names, addresses, and telephone numbers of at least 3 appropriate referrals when it is necessary to terminate.

Follow up with a client who has been terminated. If the client does not go to the referral, write a letter to him or her about relevant risks.
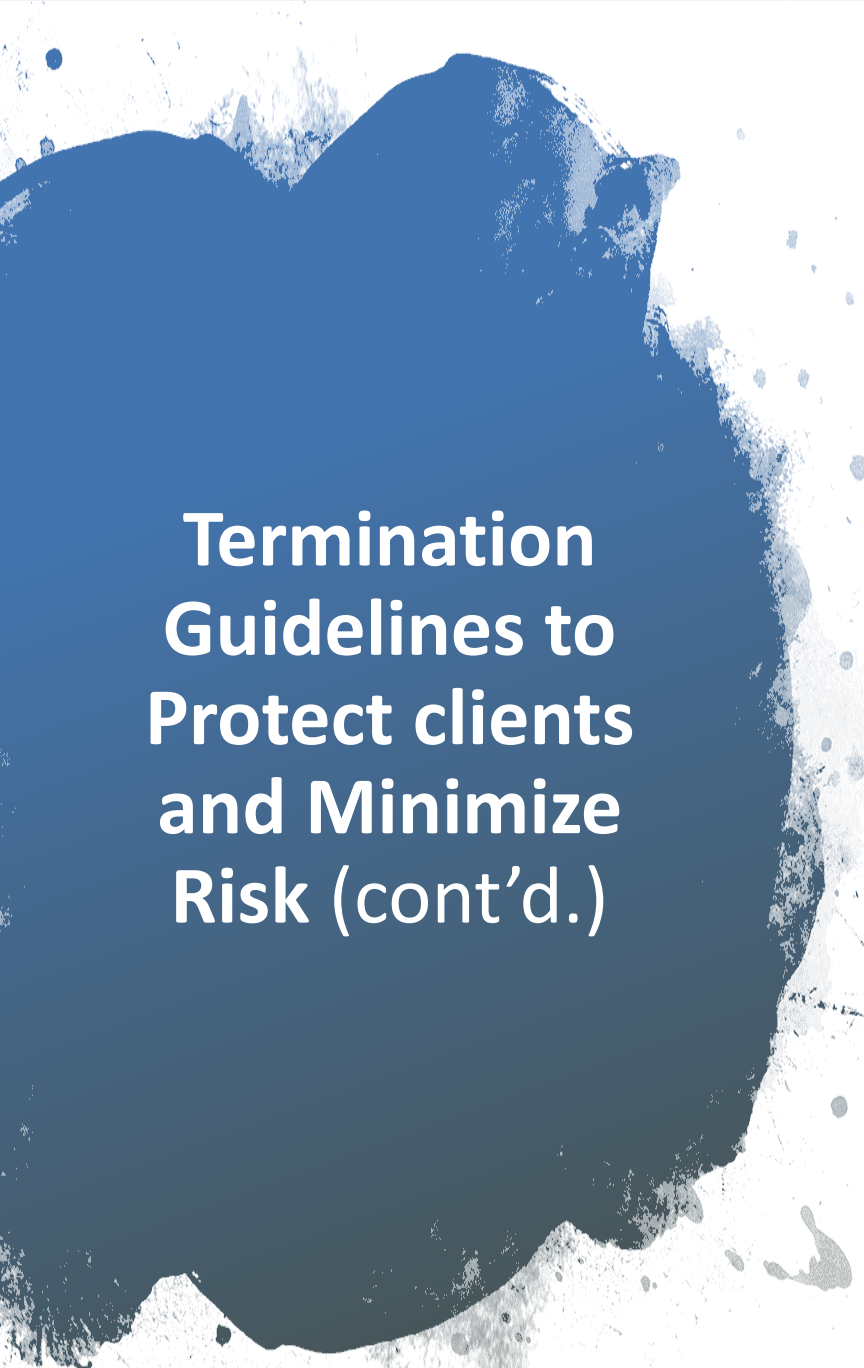
Provide as much advance warning as possible

When clients announce their decision to terminate prematurely, explain risks involved and suggestions for alternative care. Include this information in a follow-up letter.
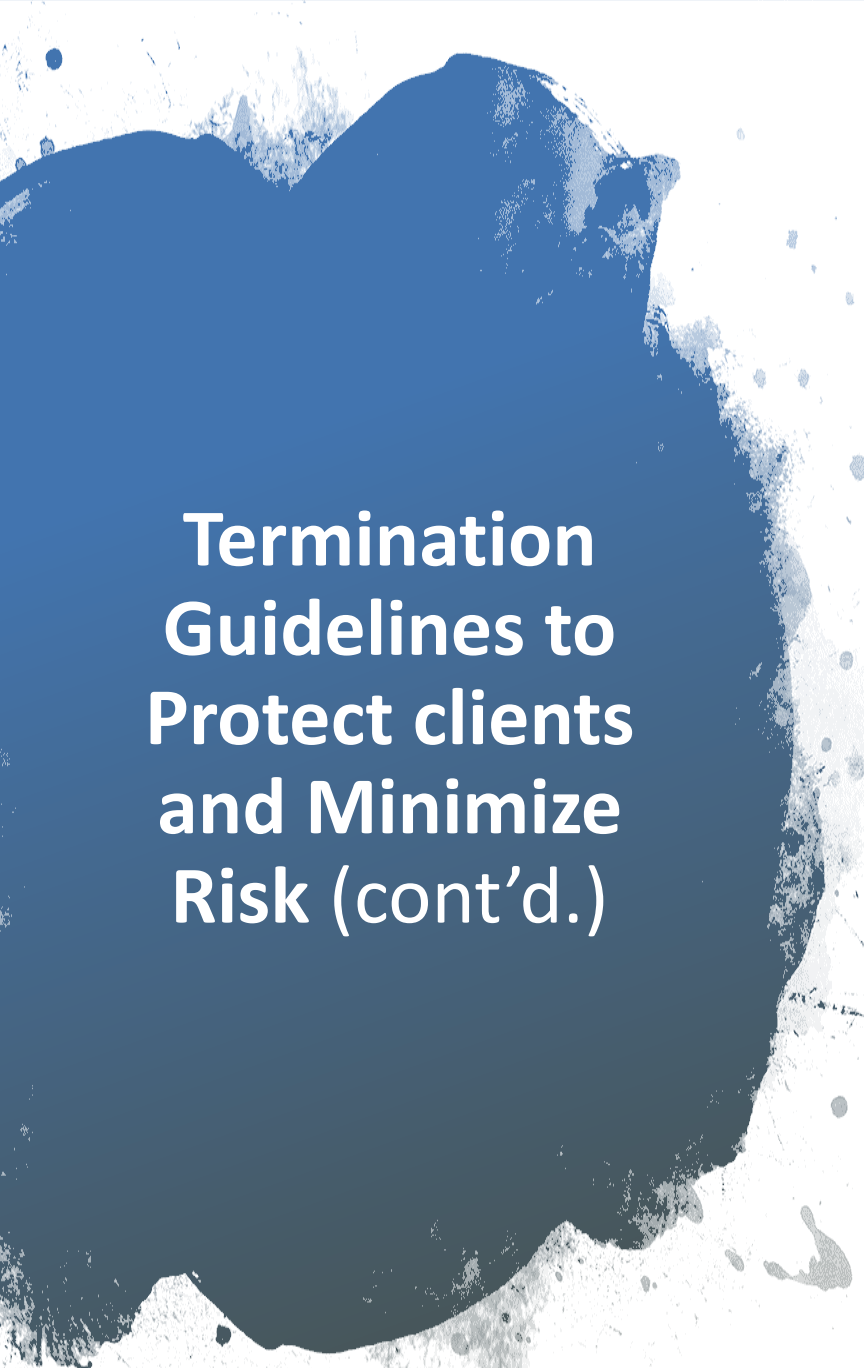
(cont'd.)

Termination Guidelines to Protect clients and Minimize Risk (cont'd.)

- Carefully document in the case record all decisions and actions related to termination.

- In cases involving discharge from residential facilities, prepare a comprehensive discharge plan and notify significant others (inform clients of this.)

- Provide clients with clear instructions to follow in the event of an emergency. Ask clients to sign a copy acknowledging receipt and that the instructions were explained to them.

Termination Guidelines to Protect clients and Minimize Risk (cont'd.)

- When leaving an employment setting, inform clients of appropriate options for continuation of services (e.g., transfer or continuation) and related benefits and risks.

- Consult with colleagues and supervisors about termination strategy and decisions.

- Consult relevant Code of Ethics standards.

Documentation of Distance Services and Interventions: Key Issues

- The role of documentation and case recording in professional practice
  - Assessment
  - Planning and delivering services
  - Accountability: clients, insurers, agencies, other providers, courts, utilization review
  - Continuity and coordination of services
  - Supervision
  - Evaluation of services

Electronic Records: Ethics and Risk Management Advice

- Utilize appropriate clinical decision support tools, including alerts, guidelines, tracking, and reminder functions.
- If you choose to override or ignore an alert or reminder, document briefly the clinical justification.
- Avoid cutting and pasting.
- Ensure appropriate, applicable templates; understand the automatic populating features and default language.
- Ensure appropriate data input and retrieval.
- Periodically print out a client record and evaluate for adequacy. Would another clinician (such as a subsequent provider or an expert witness) be able to understand what happened in treatment and why?
- Understand metadata—and the fact that the user's every key stroke will be tracked and recorded.
- Ensure appropriate security protections on hardware (including portable devices) and software; an example is an automatic lock-out after a specified period of inactivity.
- Ensure compliance with federal and state confidentiality law, including confidentiality agreements with those third parties accessing your electronic health record.
- Prevent inappropriate access and disclosure; appropriate employee training is key.

Client Portals and Remote Access: Ethics and Risk Management Advice

- Define appropriate use.
- Determine how clients will communicate through the portal and what they should expect for a response turnaround time.
- Determine if clients will be permitted to upload information to be included in their record, how the information will be uploaded, and what types of information will be accepted.
- Develop and implement a portal user agreement that includes what the client may expect from the office practice. Describe unacceptable uses, such as emergency or urgent situations, and specify the consequences. Use the agreement as a teaching tool and as documentation of informed consent. Provide the client with a signed copy of the agreement and maintain a copy at the practice.
- Include language on the appropriate portal pages—such as the entry page and the messaging window—that clearly states the portal is not continuously monitored, must not be used for urgent communications, and that portal users are to call 911 in the event of a medical emergency.
- Consult with legal counsel to determine if your state has specific requirements.
- Determine whether and how the portal may be used by clients who are minors. This raises the question of whether and when parental access to the minor client's portal should be limited or completely restricted. Answers to these questions will be driven by your state's laws pertaining to services minors may obtain based on their own consent, and whether health information related to these services may be blocked from display on the portal to prevent parental access to the information.

This presentation draws on material from the following resources:

- Deardorff, William, "Internet-Based Treatment: A Comprehensive Review and Ethical Issues": http://www.behavioralhealthce.com/index.php/component/courses/?task=view&cid=69
- Kolmes, Keely, *My Private Practice Social Media Policy*: http://www.drkkolmes.com/docs/socmed.pdf
- Reamer, Frederic G. *Ethics and Risk Management in Distance and Online Behavioral Health.* San Diego: Cognella Academic Publishing, 2021.
- Reamer, Frederic G., *Risk Management in the Behavioral Health Professions: A Practical Guide to Preventing Malpractice and Licensing-Board Complaints*. New York: Columbia University Press, 2023.
- Reamer, Frederic G., *Social Work Values and Ethics* (5th ed.). New York: Columbia University Press, 2018.
- Reamer, Frederic G., *The Social Work Ethics Casebook: Cases and Commentary* (rev. 2nd ed.). Washington, DC: NASW Press, 2024.
- Reamer, Frederic G., *Boundary Issues and Dual Relationships in the Human Services* (3rd ed.). New York: Columbia University Press, 2021.
- Reamer, Frederic G., "Artificial Intelligence in Social Work: Emerging Ethical Issues." *International Journal of Social Work Values and Ethics,* 20(2), 2023, pp. 52-71.
- Reamer, Frederic G., "Ethical Standards for Practitioners' Use of Technology: Emerging Consensus." *Journal of Social Work Values and Ethics,* 15(2), 2018, pp. 71-80.

This presentation draws on material from the following resources (continued):

- Reamer, Frederic G., *Ethical Standards in Social Work: A Review of the NASW Code of Ethics* (rev. 3rd ed.). Washington, DC: NASW Press, 2023.

- Reamer, Frederic G., "Evolving Ethical Standards in the Digital Age." *Australian Social Work,* 70(2), 2017, pp. 148-159.

- Reamer, Frederic G., "Distance and Online Social Work Education: Novel Ethical Challenges." *Journal of Teaching in Social Work*, 33(4-5), 2013, pp. 369-384.

- Reamer, Frederic G., "Social Work in a Digital Age: Ethical and Risk Management Challenges." *Social Work*, 58(2), 2013, pp. 163-72.

- Reamer, Frederic G., "The Digital and Electronic Revolution in Social Work: Rethinking the Meaning of Ethical Practice." *Ethics and Social Welfare*, 7(1), 2012, pp. 2-19.

- Reamer, Frederic G., *The Social Work Ethics Audit: A Risk-management Tool.* Washington, DC: NASW Press, 2001.

- Reamer, Frederic G., "Eye on Ethics: Novel Boundary Challenges—Social Networking," *Social Work Today*: http://www.socialworktoday.com/news/eoe_111309.shtml

- Zur Institute , *Digital Ethics—Internet and Therapy*: http://www.zurinstitute.com/articles.html#boundariesemail